

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of

Rick Powell, Stockholder
and Former Director and
President of
First Savings Bank
Arlington, Texas

No.: DAL-95-04

Dated: January 27, 1995

STIPULATION AND CONSENT TO THE ENTRY OF
AN ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Rick Powell ("Powell"), stockholder and former director and president of First Savings Bank, FSB, Arlington, Texas (OTS No. 08287) ("First Savings Bank"), that OTS is of the opinion that grounds exist to initiate an administrative civil money penalty assessment proceeding against Powell, pursuant to Section 8(1) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(1).¹

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue Order of Assessments of Civil Money Penalties where a respondent has consented to the issuance of the Order of Assessment of Civil Money Penalty ("Order");

WHEREAS, for the purpose of this settlement only, without admitting or denying the allegations herein, Powell hereby stipulates and agrees to the following terms of this Stipulation and Consent to the Entry of an Order of Assessment of Civil Money Penalty, in consideration of the agreement of the OTS

1. All references to the U.S.C. are as amended.

then in effect;

- (b) caused First Savings Bank to service the debt of the controlling shareholders through accounts of First Savings Bank contrary to 12 C.F.R. § 563.170, 12 U.S.C. § 1468 and Regulation O;
- (c) caused First Savings Bank to continue in a month-to-month lease with an affiliated party, Arlington Savings Bank Joint Venture, without the required approval of the Regional Director in violation of 12 C.F.R. § 563.41(b) as then in effect; and
- (d) caused First Savings Bank to transfer an affiliated party loan in default to a third party, release the original affiliated party borrower, and advance additional funds in violation of 12 C.F.R. §§ 563.170 and 563.43. First Savings Bank subsequently suffered loss from the transactions.

3. CONSENT

Powell consents to the issuance by the OTS of the accompanying Order. Powell further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law, including Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

4. FINALITY

The Order is issued under the authority of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i). Upon issuance of the Order, it shall be a final Order that is effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. WAIVERS

Powell waives the following rights:

- (a) The right to be served with a written notice of the OTS's charges against him (See Section 8(i) of the FDIA, 12 U.S.C. § 1818(i));
- (b) The right to an administrative hearing of the OTS's charges

to forbear from initiating any other civil or administrative proceeding against Powell arising out of Powell's actions at First Savings Bank relating to the matters as further described in Paragraph 2 of this Stipulation, known or discovered by the OTS prior to the entry of the accompanying Order.

1. JURISDICTION

- (a) First Savings Bank is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).
- (b) Powell, as a former director and president of First Savings Bank, is an "institution-affiliated party" of First Savings Bank as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u) "having served in such capacity within 6 years of the date hereof" (See 12 U.S.C. § 1818(i)(d)).
- (c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal Banking agency" with jurisdiction to initiate enforcement proceedings against First Savings Bank and/or its institution-affiliated parties. Therefore, Powell is subject to the authority of the OTS to initiate and maintain a civil money penalty assessment proceeding against him pursuant to Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

2. OTS FINDINGS OF FACT

The OTS finds that Powell, in breach of his fiduciary duty and without regard for the safety and soundness of First Savings Bank:

- (a) participated in concerted action with others to acquire control of First Savings Bank without appropriate disclosures contrary to Section 407 of the National Housing Act, 12 U.S.C. § 1730(q), as

against him (See Section 8(1) of the FDIA, 12 U.S.C. § 1818(1));
and

- (c) The right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.

6. INDEMNIFICATION

Powell shall neither cause nor permit First Savings Bank (or any subsidiary thereof) to incur, directly or indirectly, any expense for the amount of the civil money penalties assessed under the Order or any legal fees (or other professional expenses) incurred relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from First Savings Bank (or any subsidiary thereof) with respect to such amounts. Any payments received by or on behalf of Powell in connection with this action shall be returned to First Savings Bank.

7. OTHER ACTIONS, PROCEEDINGS AND PARTIES

This Stipulation and Consent to the Entry of an Order of Assessment of Civil Money Penalty ("Stipulation") and the accompanying Order are issued solely to settle this proceeding. By entering into this Stipulation, Powell acknowledges and agrees explicitly to the following provisions:

- (a) Powell acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the resolution thereof, and Powell's consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only. By signing this document Powell agrees that he will not assert the assessment or payment of this penalty as the basis for a claim of double jeopardy in any pending or future proceeding

brought by the United States Department of Justice or any other governmental entity.

- (b) This Stipulation, the Order and the payment by Powell of any monies or providing any other financial relief as contemplated by the Order, does not release, discharge, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Powell that arise pursuant to this action or otherwise, and that may be or have been brought by any other governmental entity other than the OTS.
- (c) Powell's obligation to pay civil money penalties pursuant to this Stipulation and the Order shall not be dischargeable in bankruptcy under any circumstances.

WHEREFORE, Rick Powell executes this Stipulation and Consent to Issuance of an Order of Assessment Civil Money Penalty, intending to be legally bound hereby.

By:

Rick Powell
RICK POWELL

Date: 1/11/95

Accepted by:

OFFICE OF THRIFT SUPERVISION

FREDERICK R. CASTELL
FREDERICK R. CASTELL
REGIONAL DIRECTOR
MIDWEST REGION

Date: January 27, 1995

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Before The
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In the Matter of)
Rick Powell, Stockholder)
and Former Director and)
President of)
First Savings Bank)
Arlington, Texas)
_____)

No.: DAL-95-04
Dated: January 27, 1995

ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, Rick Powell ("Powell") has executed a Stipulation and Consent to the Entry of an Order of Assessment of Civil Money Penalty ("Stipulation"); and,

WHEREAS, Powell, in the Stipulation, has consented to the issuance of this Order Assessment of Civil Money Penalty ("Order") pursuant to Section 8(i) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(i).¹

NOW THEREFORE, IT IS ORDERED that within ten (10) days of the effective date of this Order, Powell shall pay to the Office of Thrift Supervision the sum of Three Thousand Dollars (\$3,000.00), by tendering a certified check to the Office of Thrift Supervision in that amount made payable to the Treasurer of the United States. The check shall be sent, together with a cover letter stating the name of the association and the resolution number, and a copy of the Order, to the following address: Controller's Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552. A copy of the cover letter to the Controller's Division and a photocopy of the check shall be sent to Guadalupe Gonzalez, Assistant Regional Counsel, Office of Thrift Supervision, 122 West Carpenter Freeway, Suite 600, Irving, Texas 75039.

OFFICE OF THRIFT SUPERVISION

By: _____

Frederick R. Casteel
Regional Director
Midwest Region

1. All references to the U.S.C. are as amended.